

## UK General Terms and Conditions of Supply

**1. General.** Any commercial quotations, proposals, offers of sale or offers to provide services (“Quotation(s)”) by **Barloworld Handling Limited** (“Supplier”) to the customer identified in the relevant Quotation (“Purchaser”) to which these General Terms and Conditions of Sale (the “General Conditions”) are attached or referenced are based on the terms and conditions stated herein. Any additional terms specified in the Quotation shall have effect in conjunction with but subject to these General Conditions. Unless otherwise provided in the Quotation, offers are subject to availability and good for acceptance period of thirty (30) days from the date of the date of Quotation unless earlier rescinded by Supplier. Any order placed by Purchaser shall constitute an acceptance of the terms of the Quotation, including these General Conditions. The Quotation expressly limits acceptance to the terms and conditions of the Quotation, including but not limited to these General Conditions, and Supplier expressly objects to any different or additional terms in any Purchaser purchase order or other ordering or acknowledgment documentation.

**2. Interpretation.** Where these General Conditions refer to the ‘Supplier’s website’, such reference shall be read to mean [http://www.barloworld.co.uk/company/terms\\_and\\_conditions.htm](http://www.barloworld.co.uk/company/terms_and_conditions.htm) or successor thereof, as constituted as the Date of Contract unless expressly stated otherwise. Supplier reserves the right to change the content of its website from time to time without notice. Where necessary and requested, Supplier will provide details of Supplier’s website content in hard copy or other reasonable format. Headings are for ease of reference only and shall not affect or limit interpretation or otherwise form part of the contract.

**3. Prices.** Prices quoted by Supplier are subject to change without notice.

**4. Optional Purchases:** Where a Quotation includes mutually exclusive options and Purchaser has indicated their intention, by initialing or otherwise, to purchase more than one such option, then, unless expressly agreed otherwise in a separate written agreement, Purchaser shall be deemed to have purchased only the lowest priced mutually exclusive option. Supplier’s determination of what constitutes a ‘mutually exclusive option’ shall be final.

**5. Delivery or Performance.** Subject to clause 10, as at the date of delivery, goods and services shall be substantially as described in the Quotation and Supplier’s website, as applicable. Delivery of goods shall be made by transfer to the first carrier for shipment to Purchaser or Purchaser’s consignee. Services will be performed at the locations defined in the Quotation or, if not so specified, at Supplier’s premises or other location(s) of Supplier’s choice. Supplier’s stated delivery or performance dates are an estimate only based upon Supplier’s best judgment and Supplier shall not be responsible for deliveries or performance later than promised regardless of the cause. Delivery periods are projected from the anticipated date of receipt of an order by Supplier. If goods to be furnished by Supplier are to be manufactured specifically to fill a particular order, delivery periods will be projected from the date of Supplier’s receipt of complete manufacturing information, including necessary blueprints and specifications, Purchaser’s acceptance of said blueprints and specifications and the exchange of other information necessary for production. Purchaser shall not defer or refuse delivery of goods and services when tendered by Supplier on or after the stated date for delivery and, if Purchaser does, then Supplier may charge and Purchaser shall pay for storage of the goods or aborted service costs and expenses at Supplier’s then current rates and, in its sole discretion and without prejudice to any other rights or remedies available, Supplier may without further notice to Purchaser dispose of any such goods at any time after thirty (30) days from Supplier’s stated date for delivery. Supplier shall not be obliged to perform and shall be released from any and all liability if: (i) the relevant goods are no longer available at the date of Purchaser’s order; (ii) if Purchaser fails to satisfy Supplier’s credit checks or other similar inquiries; or (iii) if Purchaser fails to comply with its obligations under clause 18, provided that Supplier notifies Purchaser verbally, by email, in writing or by any other reasonable means.

**6. Transportation.** Supplier shall deliver goods to Purchaser’s place of business identified in the Quotation or, if not so specified, to Purchaser’s place of business nearest to Supplier’s premises at which the goods are prepared. Unless otherwise expressly stated in the Quotation, prices quoted for goods exclude delivery charges, which Purchaser will pay at Supplier’s quoted rates. At delivery, purchaser shall be responsible for providing all loading and unloading resources and facilities at its own risk and expense.

**7. Title and Risk.** Supplier’s responsibility for the goods shall cease and all risk of loss and/or damage shall become Purchaser’s upon delivery of the goods to the first carrier for shipment to Purchaser or Purchaser’s consignee, and any and all claims for shortages, deliveries, damages or non-delivery must be made by Purchaser or Purchaser’s consignee to the carrier. In no event shall Supplier be responsible for any shortages in shipment unless notice of such shortage is given in writing to Supplier within 15 days after receipt of shipment. Title to goods shall not pass to Purchaser until Supplier has received payment in full (in cash or cleared funds) for: (i) such goods; and (ii) all other sums which are or which become due to Supplier from Purchaser for supply of goods, services or on any account. Until title to goods has passed to Purchaser, Purchaser shall: (i) hold such goods on a fiduciary basis as Supplier’s bailee; (ii) store such goods separately from all other goods held by Purchaser so that they remain readily identifiable as Supplier’s property; (iii) not remove, deface or obscure any identifying mark or packaging on or relating to such goods; and (iv) maintain such goods in satisfactory condition and keep them insured on Supplier’s behalf for their full price against all risks with an insurer that is reasonably acceptable to Supplier. On request Purchaser shall allow Supplier to inspect such goods and the insurance policy. If before title to goods passes to Purchaser, Purchaser becomes insolvent or ceases to carry on its business for any reason, then, provided that such goods have not been resold and without limiting any other right or remedy Supplier may have, Supplier may at any time require Purchaser to deliver up such goods and, if Purchaser fails to do so promptly, enter any premises of Purchaser or of any third party where the relevant goods are stored in order to recover them.

**8. Services.** If the Quotation includes services, then: (i) services shall be as described in Quotation and Supplier’s website; (ii) availability of specific service packages may be limited to specific transaction types, as described in the Quotation and Supplier’s website; (iii) Supplier’s obligation to provide services shall be limited to the specific number of trucks or other items of equipment identified in the Quotation (and, if no such quantity is specified, it shall be a single item); (iv) if equipment is used in a more demanding application than defined in any application survey provided by Supplier then Supplier reserves the right to charge and Purchaser shall pay additional fees for maintenance for such equipment at Supplier’s then current rates applied to use of similar equipment in a similar application; (v) if a service restriction or limitation imposed by Supplier (including any maximum number of hours of use) is exceeded, then, Supplier reserves the right to charge and Purchaser shall pay additional fees at Supplier’s then current rates corresponding to such breach or excess; and (vi) for periodic services (e.g. term maintenance services), the relevant services period shall commence upon physical delivery of the relevant items of equipment to Purchaser, as conclusively evidenced by Supplier’s delivery documentation. Supplier reserves the right to confirm the specific equipment serial numbers for which the maintenance services have been purchased by notice in writing to Purchaser, which notification shall be binding upon Purchaser unless disputed in writing within five (5) working days of the date of Supplier’s notice.

**9. Acceptance.** Goods are accepted when risk transfers in the goods in accordance with Clause 7 All services shall be deemed accepted at the time of performance unless Purchaser notifies Supplier otherwise in writing within five working days of performance of the particular service.

**10. Limited Warranty and Exclusions.** Notwithstanding any other provisions of the Quotation or the General Conditions, subject only to the following provisions of this clause 10, Supplier makes no representations or warranties with respect to any goods or services, which are supplied on an ‘as is’ basis. Subject to the exclusions and limitations set out in this clause 10 and elsewhere in these General Conditions, the following specific warranties shall apply. **For New Equipment:** New equipment may be subject to and covered by: (i) standard warranties provided by the third-party manufacturer thereof; and, in addition, (ii) if offered in the relevant Quotation and purchased and paid for by Purchaser at the time of purchase of the relevant equipment, certain manufacturer’s extended warranties. Details of the manufacturer’s warranties and related conditions shall be as set out at Supplier’s website or as otherwise available upon request. Supplier’s only liability is to pass through the benefit of any such applicable manufacturer’s warranties to Purchaser. **For Used Equipment:** If the Quotation expressly includes a warranty for a particular unit of used equipment, then, Supplier’s sole liability shall be for Supplier, at its option, directly or indirectly, to repair or replace at its own expense, when returned to Supplier at purchaser’s expense within not more than thirty (30) days of expiry of the applicable warranty period, any defect(s) in materials or workmanship arising in warranted components of such used equipment which cause the equipment to break-down provided that the relevant break-down is notified to Supplier in writing within the relevant warranty period and within ten (10) days of discovery of the relevant defect(s). Details of ‘warranted components’, ‘applicable warranty periods’ and related definitions and conditions for a particular level of warranty shall be as set out at Supplier’s website or as otherwise available upon request, PROVIDED THAT, in no event shall any warranty period for used equipment exceed six (6) months from the date of delivery or five-hundred (500) hours of use, whichever is the shorter period. **For Spare Parts:** Spare parts may be subject to and covered by standard warranties provided by the third-party manufacturer thereof. Details of the manufacturer’s warranties and related conditions shall be as set out at Supplier’s website or as otherwise available upon request. Supplier’s only liability is to pass through the benefit of any such applicable manufacturer’s warranties to Purchaser. **For Services:** If the Quotation includes services, Supplier’s only liability shall be for Supplier to re-perform, directly or indirectly, at its own cost and expense such services which were not performed in a professional and workmanlike manner in accordance with generally accepted industry standards as notified as such to Supplier in writing by Purchaser within thirty (30) days of the date of performance of the relevant services. **Exclusions and Limitations:** Unless expressly stated otherwise or agreed in writing by Supplier, all warranties shall expire automatically upon sale of equipment or transfer of any other substantial interest in the equipment. Supplier hereby excludes to the maximum extent permitted by law any and all customary, implied and Statutory terms, conditions, warranties and representations with respect to the state, quality, description, performance or otherwise relating to the goods or services, including any regarding fitness for a particular purpose, satisfactory quality or non-infringement. Unless expressly stated otherwise, Supplier does not represent or warrant that any of the goods will comply with any particular licensing, construction, health & safety or other legal requirements nor that any particular equipment may be used on public highways. Any ‘Application Surveys’ or any similar documents or statements provided by Supplier are provided solely for the purposes of identifying the likely maintenance impacts on equipment used in particular circumstances and Supplier makes no warranties or representations that equipment shall be fit for use in any particular applications or purposes unless agreed separately in writing by an authorized representative of Supplier. **General Conditions:** Supplier shall have no liability to perform any warranty or other obligations under contract where Purchaser: (i) is in arrears of any payments due to Supplier; or (ii) has not performed Purchaser’s responsibilities or has not satisfied all the conditions relating to warranty or maintenance, as defined at the Quotation and Supplier’s website. Supplier may cancel, without liability, any applicable warranties where an equipment serial number has been tampered with. Purchaser shall be liable to pay Supplier immediately on demand at Supplier’s then current rates for any work and materials provided by Supplier which do not qualify as a warranty claim. Supplier may inspect and test any items subject of a warranty claim.

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**11. Prices and Payment.** Unless otherwise expressly stated in the Quotation: (i) all prices shall be Supplier's then current list prices; (ii) payment for goods shall be made net cash upon delivery as provided in clause 6; and (iii) fees for services and any manufacturer's warranty extensions are payable in full in advance within thirty (30) days of the date of Supplier's invoice except for any services for which Supplier applies monthly or other periodic payments, in which case payment of the relevant installment shall be due in full within thirty (30) days of the date of the relevant invoice. Invoices are payable in Sterling in full except when and to the extent Supplier expressly accepts a trade-in from Purchaser and assigns a value to such trade-in. An invoice amount will only be reduced by a trade in sum once Purchaser has, at its own cost, expense and risk, physically delivered the trade-in equipment to Supplier's designated delivery location(s) and passed good and valid title thereto to Supplier free and clear of all liens and encumbrances. Supplier reserves the right to inspect trade-in equipment and may, in its sole discretion, reject a trade-in or offer a reduced trade-in sum where the condition of the trade-in equipment at delivery to Supplier has deteriorated from the condition assessed during Supplier's earlier inspection(s). Accounts in arrears more than thirty (30) days will bear interest at two percent (2%) over LIBOR or such lower maximum as permitted by law. Purchaser shall not be entitled to any refunds in any circumstances. In the event of attachment or execution being levied against the goods, the insolvency/bankruptcy of Purchaser or any default by Purchaser in payments to Supplier, in addition to all other rights and remedies available to Supplier, Supplier may seize the property involved and in connection therewith shall have a right of entry to the maximum extent permitted by law. Supplier shall be entitled to offset from any amounts due to Purchaser under any agreement(s) or otherwise any amounts due from Purchaser to Supplier.

**12. Errors.** Errors made in the Quotation due to incorrect mathematical computations, erroneous equipment selection or recommendation, or other errors or omissions materially affecting the Quotation are sufficient grounds for immediate and complete cancellation of the Quotation or related contract by Supplier only.

**13. Force Majeure.** If the furnishing of goods or services on orders accepted by Supplier is hindered or prevented by public authority or by the existence of war or other contingencies, including, but not limited to, shortage of materials, fires, labor difficulties, acts of terrorism, diseases, pandemic, accidents, delays in manufacture or transportation, acts of God, embargoes, inability to ship, inability to insure against war risks or substantially increased prices or freight rates, or other causes beyond Supplier's control, the obligation to fill or complete such orders shall be excused at Supplier's option and all other obligations of Supplier hereunder shall be suspended without liability during the existence and continuance of the delay caused thereby.

**14. Laws Governing.** The Quotation and any contract arising therefrom and these General Conditions and all orders resulting will be governed by the laws of England and Wales. Purchaser hereby irrevocably specifically consents to the exclusive jurisdiction and venue of London, England, without prejudice to the right of a Supplier to enforce a judgment of the English Courts in any other jurisdiction.

**15. Rights Reserved.** Supplier, for itself and for any manufacturer from which it acquires the goods, reserves the right to make changes in the design of the goods.

**16. Intellectual Property.** With respect to goods or parts thereof manufactured or produced in accordance with designs or design information supplied by Purchaser or its third party agents, Purchaser shall indemnify and save harmless Supplier and any manufacturer from which it acquires such goods, and their successors and assigns, against all loss, damage, liability, patent, trademark or corresponding rights related to the manufacture or sale of such goods. Supplier retains all rights in respect of the goods and services, including any new rights created in connection with any services or otherwise in connection with this agreement.

**17. Taxes.** In addition to the prices provided herein, Purchaser shall pay all taxes and duties imposed by reason of any sale or lease to which this instrument relates other than taxes upon or measured by net income of Supplier. Such amounts shall be paid in full when the price for the goods or services is due.

**18. Purchaser to Furnish.** Following a request by Supplier, Purchaser shall promptly provide to Supplier such originals or copies, as necessary, of any export licenses, letter of credits, other evidence of funding for the relevant purchases or any other similar documents necessary for the completion of such order to Supplier's satisfaction.

**19. No Waiver or Amendment.** No waiver or amendment of any of these General Conditions shall be effective unless in writing and signed by an authorized signatory of Supplier PROVIDED THAT any changes to or exclusion of clauses 19, 20 and 22-25 inclusive of the General Conditions must be made in writing signed by Supplier's General Counsel. No waiver of any breach of any terms or conditions of this form shall be construed as a waiver of any subsequent breach of any term or condition of the same or a different nature.

**20. Assignment.** The right to any monies due to or to become due hereunder may be assigned by Supplier, and Purchaser upon receiving notice of such assignment, shall make payments as directed.

**21. Entire agreement.** Where a Quotation has been provided, the applicable terms of agreement shall be these General Conditions and the printed Quotation only. Except where the parties have expressly agreed otherwise in a written document signed by each party's authorized representative (which in the case of Supplier and for all purposes of this agreement means someone holding the position of General Counsel, National Finance Director, National Managing Director or above), the version of General Conditions applicable at the date of the latest Quotation signed by Purchaser shall apply to any sale of goods or services (including spare parts) by Supplier to Purchaser at any time on or after the date of Purchaser's signature of such Quotation except that the price for any such future supplies shall be Supplier's then current list price or such other prices as may be agreed in writing by and between the parties. The foregoing, together with any attendant prints and specifications, shall constitute the complete and exclusive agreement between the parties to the exclusion of any other terms and conditions. In the event of any conflict, the

following descending order of priority shall apply: (i) clauses 19, 20 and 22-25 of these General Conditions; (ii) the remaining provisions of these General Conditions; (iii) warranty details, preparation standards and related definitions and conditions (other than these General Conditions) as set out at Supplier's website; and (iv) the printed Quotation and any other attendant documentation. It is expressly understood and agreed to that no promises, provisions, terms, warranties, conditions, guarantees or obligations whatsoever, either expressed or implied, other than as set forth in the Quotation and these General Conditions shall be binding on either party.

**22. Exclusions of Liability.** Supplier shall not be liable to Purchaser or any persons claiming through them for any loss of profit, loss of revenue or loss of savings, whether incurred directly or indirectly, arising out of or in connection with: (i) the Quotation; (ii) this agreement; (iii) any breach or non-performance of its obligations under this agreement, no matter how fundamental (including by reason of Supplier's negligence). Supplier shall not be liable to Purchaser or any persons claiming through them for any: (i) indirect loss; (ii) loss of goodwill, reputation or opportunity; or (iii) other consequential or indirect loss, in each case arising out of or in connection with this agreement or any breach or non-performance of it no matter how fundamental (including by reason of Supplier's negligence) whether or not Supplier had been informed of or was aware that there was a serious possibility of such loss. Supplier shall not be liable for any loss of any sort whatsoever suffered by Purchaser as a result of the goods or services or any part thereof being unusable, out of order or unserviceable.

**23. Limitation of Liability.** Supplier's total liability arising under or in connection with this agreement or any breach or non-performance of it no matter how fundamental (including by reasons of Supplier's or its agents, employees or sub-contractor's acts or omissions, including wilful default or neglect) in contract, tort or otherwise shall be limited to the fees paid by Purchaser in the twelve (12) month period preceding the date of Supplier's alleged breach of this Agreement (the "Liability Cap").

**24. Limitation Period and Waiver.** Any claims made against Supplier by Purchaser or any persons claiming through them must be brought within two (2) years of Supplier's alleged breach of this agreement. Purchaser hereby irrevocably waives its right to claim damages or otherwise recover any sums by any means from Supplier which exceed the Liability Cap.

**25. Exceptions.** Notwithstanding any other provisions of this agreement, Supplier does not exclude or limit liability it may have for death or personal injury caused by its own negligence, defective products fraud or for any other liability which cannot be excluded or limited as a matter of law.

**26. Financing, Leasing, Hire Purchase and other Hire or Rental.** Unless expressly agreed otherwise in writing, as a condition of any finance, customer shall purchase full maintenance for all the financed equipment for the full duration of the finance term. Notwithstanding any other provisions of these General Conditions or a Quotation, such transactions shall be subject to contract and additional or other terms and conditions to be provided by Supplier and/or a third party finance supplier in connection with the financing or leasing of the relevant goods and/or services, details of which are available upon request. Supplier shall have no obligations and no liability in respect of such transactions unless and until such separate terms and conditions have been executed by Supplier, Purchasers and any relevant third parties.

**27. Access.** Purchaser hereby irrevocably grants to Supplier (including its employees, agents and sub-contractors) a right to access to the equipment and any property owned or controlled by Purchaser to the extent necessary: (i) to perform the contract; and (ii) to exercise any of its rights and remedies arising under these General Conditions, including the right to remove or otherwise bypass any security measures without liability to Purchaser.

**28. Severability.** Any provision of these General Conditions which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**29. Cancellation and Return of Spare Parts.** Purchaser may not cancel any contracts arising from Quotation(s) signed by Purchaser without Supplier's prior written consent, and, as a condition of any such consent by Supplier, Purchaser agrees to pay: (i) a re-stocking fee of fifteen percent (15%) of the total charges due under the relevant order(s) cancelled to cover Supplier's wasted administration and other costs and expenses ("Re-Stocking Fee"); and (ii) such additional amounts, as applicable, equal to any unavoidable costs and expenses incurred by Supplier which exceed the Re-Stocking Fee, including but not limited to manufacturer's cancellation costs and expenses. Except as may be expressly agreed by an authorized representative of Supplier in writing, Supplier shall not be obliged to make and Purchaser shall not be entitled to any refunds of any sums due or paid to Supplier. Where Purchaser purchased spare parts from Suppliers, Supplier may, in its sole discretion, accept return of spare parts for credit in accordance with Supplier's then current policy, as set out at Supplier's website or otherwise as available on request. Supplier reserves the right to cancel, suspend or amend this policy from time to time by notice to Purchaser or, generally, by notice at its website or by any other reasonable means.

**30. Suspension and Termination by Supplier.** Supplier may suspend performance of its obligations under this agreement, in whole or in part, without liability if the Customer or any of its group companies are in material breach of this or any agreement with Supplier, including any arrears of payment.

**31. Third Party Rights.** Any limitations or exclusions expressed for the benefit of Supplier shall also extend for the benefit of Supplier's licensors or other suppliers and their respective employees, officers, directors, contractors, distributors or agents.